

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 741 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

JESO ALIAS JESING LADHUBHAI DHAMECHA (KOLI)

Appellant

Versus

STATE OF GUJARAT - Opponent

Appearance :

MR PRAVIN S. GONDALIYA for Appellant.

MR KT DAVE, APP for Opponent.

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CORAM :	HONOURABLE MR.JUSTICE A.M.KAPADIA
	and
	HONOURABLE MR.JUSTICE K.A.PUJ

Date : 25/01/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant - original accused has filed this appeal under Section 374(2) of the Criminal Procedure Code against the judgment and order dated 10.07.2001 passed by the learned Sessions Judge, Rajkot in Sessions Case No. 55 of 2000, whereby the appellant - original accused was convicted for an offence punishable under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and was sentenced for the R.I of 10 years with fine of Rs.1,00,000/- (Rupees One Lac Only) and in default thereof, to undergo R.I of two years more.

2. The appeal was admitted by this Court on

15.03.2002. Alongwith the appeal the appellant - original accused has prayed for suspension of the judgment and order of the learned Sessions Judge, Rajkot and also requested to grant bail during the pendency and final disposal of the appeal. However, in view of the decision of the Hon'ble Supreme Court in the case of *Dadu @ Tulsidas V/s. State of Maharashtra, (2000) 8 SCC 437*, the learned counsel for the appellant did not press prayer for bail and hence, it was rejected as not pressed.

3. The prosecution story in short is that Mr. N.C. Pandya, PSI, 'B' Division Police Station, Rajkot has filed a complaint wherein it was stated that when he was present from 10.00 o'clock on 02.02.2000 in the room of Police station 'D' Staff, he received an information to the effect that one person, namely, Jeso @ Jesing Laghubhai Koli who was about 32 years old and who has put on snuff coloured pant and full sleeves shirt having print of stumps and ball in white and gray coloured checks and who is having beard on his face and residing at Shivajinagar, Opp.

New Power House, Rajkot had a quantity of brownsugar in his custody and used to sell the same. He was standing near Dudhsagar way Faruki Mosque. Upon receiving such definite information, after making entry No. 10/2000 in Police Station Diary, 'B' Division Police Station at 12.35 o'clock and forwarding the said entry to the Assistant Police Commissioner, East Zone and Deputy Police Commissioner, Rajkot and after making a report for calling upon a Scientific Officer for analysis of intoxicating substance, found if any, a police constable Ashoksinh Chhotubha was sent by private vehicle. As soon as Scientific Officer Shri A.L. Gameti came with analysis kit with himself at the police station 'D' staff room, he was informed about the necessary facts of the information received. Thereafter, Police Constable Gambhirsinh Chandubha was sent to call upon two prestigious panchas. As he called upon two local panchas, namely, Pravinbhai Somabhai Sedrani and Sharadbhai Samjibhai Talsaniya, they were explained about the information received and

explained to be in panchas and as panchas have shown their willingness to be in panchas, panchas were introduced with Scientific Officer and upon carrying out preliminary panchnama from 13.20 to 13.35 hours, signatures of the panchas were taken. Thereafter, they have started from 'B' Division police station 'D' staffroom towards the place of the aforesaid information, near Dudhsagar Faruki Mosque in each one's individual private vehicle carrying particulars of the seal. Upon making entry No.12/2000 in Station Diary, Police station at 13.40 hours and Head Constable Gulabbhai Gameti, Police Constables Gambhirsinh Jadeja, Ashoksinh Jadeja, Jashabhai Madanbhai, Ramesh Patel and Vijay Shukla of the staff of police station and two panchas and F.S.L. Officer Shri Gameti started in a private vehicle and reached to Dudhsagar road to a street near Faruki Mosque and got down from the vehicles and has parked vehicles separately from each other.

4. On seeing a person described as above, he was squardened immediately and upon asking his name

and address, he stated to be Jeso @ Jesing Laghubhai Koli. The said person was introduced about their identities to be Police personnels and he was informed orally and in writing that they have received definite information that he was keeping intoxication substance, namely, brownsugar and his particular search was required to be made. He was asked as to whether he wanted to get his search carried out through any Gazetted Officer or Magistrate. Upon asking the same, the said person answered that he did not want to get search to be carried out through anybody else and that they could carry out search. Upon stating so, search of the Police Personnels and panchas was carried out and no intoxicating substance was found. Thereafter, upon making a search of the said person Jeso @ Jesing Laghubhai Koli in presence of panchas, light gray coloured substance was found in a white transparent bag from his right pocket of the pant put on by him. Upon smelling the said substance by panchas and police and getting the same smelled to each other, a specific type of smell was coming out

of it. Therefore, as Scientific Officer Shri Gameti was informed to do chemical analysis of the said substance, he has carried out analysis of the said substance and he has stated that the said substance to be brownsugar. A written report was taken from him. Thereafter, with a view to weigh the substance - brownsugar from the said person, a police Constable Gambhirsinh Chandubha was sent to call upon any trader and he called upon one Kishorbhai Mohanlal Bhatti, a resident of Bedinaka, Patvari Street, Rajkot along with weighing scale and weighing machine. He weighed brownsugar found out from the custody of the said Jeso @ Jesing Laghubhai Koli and the same weighed to be 7 Grams and 700 Milligrams and the certificate regarding the said weight was taken from the said trader. Thereafter, the quantity of above brownsugar valuing Rs.77,000/-, and after placing seal of Police Inspector, Rajkot City, was taken into custody in respect of the above panchnama and also currency of Rs.400/- found from him was taken into custody for investigation. A seizure memo of the quantity of

brownsugar and currency taken into custody from the said Jeso @ Jesing Laghubhai Koli was prepared and a copy thereof was given to the said person and signature of the said person was taken into another copy. In the above view of the facts and circumstances, the said Jeso @ Jesing Laghubhai Koli, by keeping quantity of 7 Grams and 700 Milligrams brownsugar, valuing Rs. 77,000/- illegally in his custody, has committed an offence under Section 8 (c) read with Section 21 of the Act. He was, therefore, arrested lawfully on 02.02.2000 at about 15.45 hours and he was informed about the reasons of his arrest in writing and copy thereof was given to him and his signature was taken into another copy.

5. After filing of the complaint and charge-sheet in the Court of learned Sessions Judge, Rajkot, charge was framed against the accused and when he pleaded not guilty to the charge and claimed to be tried, he was put to trial by the learned Sessions Judge, Rajkot in Sessions Case No. 55 of 2000.

6. To prove the culpability of the accused, the prosecution has examined as many as 09 witnesses, details of which are as under:-

Sr. No.	Particulars	Exh No.	Page No.
1	P.W No. 1 - Navalkishor Chhotalal Pandya.	12	40-47
2	P.W No. 2 - Kishorbhai Mohanlal Bhatti.	24	68
3	P.W No. 3 - Pravinbhai Somabhai.	25	69-70
4	P.W No. 4 - Ashish Babulal.	27	72
5	P.W No. 5 - Mamadbhai Ibrahimbhai	29	74-75
6	P.W No. 6 - Ganpatprasad Banarasiprasad.	32	78
7	P.W No. 7 - Gambhirsinh Chandubha	33	79-81
8	P.W No. 8 - Mahendrasinh Harisinh Zala.	34	82-83
9	P.W No. 9 - Ajitbhai Laljibhai Gameti.	38	91-92

7. Prosecution has also produced as many as 16 documents and relied upon the contents of the same, details of which are as under :-

Sr. No	Exh. No.	Particulars	Page No.
01.	1	Charge-sheet.	11-17
02.	2	Charge.	18-20
03.	13	Information Report.	48
04.	15	Report under Section 50 of the Act.	50
05.	16	Preliminary Panchnama.	51-56
06.	17	Complaint	57-60

<i>Sr. No</i>	<i>Exh. No.</i>	<i>Particulars</i>	<i>Page No.</i>
07.	19	Arrest Memo	62
08.	21	Slip duly signed by Panchas.	65
09.	22	Extract from Station Diary.	66
10.	28	Receipt of Muddamal	73
11.	30-31	Extracts from Station Diary.	76-77
12.	35	Ravangi Note.	84-87
13.	37	FSL Report.	89-90

8. After recording of the evidence of the prosecution witnesses was over, the learned Sessions Judge, Rajkot explained to the accused the circumstances appearing against him in the evidence of the prosecution witnesses and recorded his further statement under Section-313 of the Code. In his further statement, the accused has denied the case of the prosecution by reiterating that he has been falsely implicated.

9. On appreciation, evaluation, analysis and close scrutiny of the evidence adduced by the prosecution, the learned Sessions Judge, Rajkot has held that the accused is guilty of committing an offence under

Sections-21 of the Act and he was convicted of the said offence.

10.The learned Sessions Judge, Rajkot thereafter heard the accused and his advocate on sentence and looking to the gravity of the offence committed by the accused and looking to the circumstances, accused was sentenced to suffer R.I of 10 years and fine of Rs. 1 Lac and in default thereof, R.I. of two years for an offence punishable under Section-21 of the Act.

11.Being aggrieved by the said judgment and order, the accused has filed the aforesaid appeal before this Court.

12.Mr. Pravin S. Gondaliya, learned advocate appearing for the appellant - original accused has submitted that the learned Sessions Judge has committed an error on the face of the record by convicting the appellant - original accused for the offence punishable under Section 21 of the Act. The

learned Sessions Judge has misdirected himself in appreciating the evidence placed on record. The learned Sessions Judge recorded the findings which are not based on the evidence on record. The learned Sessions Judge should have appreciated the evidence and should have also held that the prosecution has failed to prove the offence against the appellant - original accused beyond reasonable doubt. The learned Sessions Judge has failed to consider the mandatory provisions of Sections 42, 50, 52, 55 and 57 of the Act. He has further submitted that the learned Sessions Judge has brushed aside all the contradictions appeared in the depositions of the witnesses. There are material contradictions in the deposition and these contradictions show that there are many doubts in the case of the prosecution and, therefore, benefit of doubt ought to have been given to the appellant - accused. The learned Sessions Judge has failed to consider the legal aspects of the mandatory provisions of the Act. There is a breach and violation of mandatory provision of Section 42 (2) of the Act.

As per this provision, the secret information reduced in writing shall have to be forwarded to his immediate superior. Mr. Gondaliya has further submitted that the complainant in his deposition has admitted that he has not sent the copy of the information received by him to his immediate superior officer and, therefore, there is clear violation of mandatory provision of Section 42 (2) of the Act. Hence, the judgment and order of conviction is liable to be quashed and set aside. He has further submitted that there is violation of Section 57 of the Act. Whenever any person makes any arrest or seizure under this Act, he shall within 48 hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior. This provision is not at all complied with by the prosecution and, therefore, the judgment and order of conviction is liable to be quashed and set aside. He has further submitted that there is serious discrepancy regarding seal of the muddamal. The complainant has mentioned that he had affixed the

seal of P.I. B Division Police Station, Rajkot. While PSO states in his deposition that he had also affixed his seal on muddamal. Therefore, there should be two seals on muddamal packet. However, while the sample receipt issued by the FSL reveals only one seal and there is no seal of P.I., B Division Police Station, Rajkot. There are number of doubts in the prosecution case even with regard to muddamal and sample and hence, the benefit of doubt should have been given to the appellant - accused. He has further submitted that there is violation of provision of Section 102 (3) of the Criminal Procedure Code. Whenever any seizure of contraband article is made, it is to be reported to the Magistrate. Even assuming that this provision of Section 102 (3) are in nature of directory and also substantial compliance thereof would have to be made, this provisions are not at all complied with and, therefore, the judgment and order of conviction is liable to be quashed and set aside.

13.Mr. Gondaliya has further submitted that the

sealing procedure adopted by the raiding party and / or the investigation agency is very defective and the slip duly signed by the panchas as well as PI were not affixed, as required under law and in accordance with the judgments delivered by this Court.

14. In support of the above submission, Mr. Pravin Gondaliya, the learned advocate of the appellant - original accused has relied on the decision of this Court in the case of **Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409** wherein after considering earlier three decisions of this Court, namely, **(i)** *Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153*, **(ii)** *unreported decision dated 17.08.2001 rendered in Criminal Appeal No. 323 of 1996 filed by Jitendra @ Sanjaykumar Suryakant Desai against State of Gujarat* and **(iii)** *decision dated 07.05.2002 rendered in Criminal Appeal No. 287 of 1999 filed by Ganpatram Punmaram Vishnoi against State of*

Gujarat, the Court held that as per the law laid down by this Court, the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn. On re-appreciation of evidence, the Court was satisfied that correct and fool-proof procedure of sealing was not resorted to by the Investigating Officer and possibility of tampering with muddamal was not ruled out at all. The Court has evaluated such deficiency in light of other discrepancies brought on record of the case and held that it was difficult to sustain conviction of the appellant – accused. The appeal was accordingly allowed and the appellant – accused was ordered to be released from jail forthwith unless his presence in jail was needed with reference to any other case.

15.Mr. K.T. Dave, the learned Additional Public Prosecutor appearing for State of Gujarat, on the other hand, supported the order and judgment of the learned Sessions Judge, Rajkot and submitted that

there was no violation of any statutory provision and all necessary compliances were made by the raiding parties and/or investigating agency and there was no substance in the argument that the provisions contained in Sections 42, 52, 55 and 57 of the Act were violated. So far as sealing procedure is concerned, he has submitted that as per the panchnama drawn at the site, proper procedure has been adopted and it cannot be said that sealing procedure conducted by the raiding party was defective.

16. We have considered the submissions advanced by Mr. Pravin Gondaliya, learned advocate appearing for the appellant - original accused and Mr. K.T. Dave, learned Additional Public Prosecutor appearing for State of Gujarat at length. We have also undertaken a complete and comprehensive exercise of appreciating all vital features of the case and the entire evidence on record with reference to broad and reasonable probabilities of the case. We have also gone through the entire testimonial

collections. We have applied our mind to the impugned judgment and order passed by the learned Sessions Judge, Rajkot convicting the appellant - original accused.

17. Though several contentions were raised before the Trial Court and before this Court, we confine ourselves to deal with the strong protest lodged against sealing procedure adopted by the prosecution. Even otherwise, we are not impressed much by the other contentions raised by Mr. Pravin S. Gondaliya, the learned advocate of the appellant - original accused. The main grievance was that the identity of the muddamal and the samples sent to the F.S.L. is not established. There was a possibility of tampering with the contents of the samples. The samples were not kept in safe and proper custody and the sealing procedure was absolutely defective. The defect found on perusal and appreciation of the evidence of the witnesses with regard to the sealing procedure led us to believe that the possibility of the tampering of the contents of sample cannot be ruled

out.

18.To examine and appreciate the aforesaid contention, relevant provisions in the Act or Rules made thereunder, touching this subject matter are required to be looked into.

19.Section 55 of the Act deals with Police to take charge of articles seized and delivered. It provides that Officer in charge of police station shall allow any officer depositing the seized articles to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. Except this, no provision seems to have been made in the present Act and Rules framed thereunder regarding mode of taking and sealing of the sample, mode of assigning the same to chemical examiner and their chemical examination or even touching the above matters. However, the Central Government issued Standing Instruction / Orders. Standing Order No. 1/88 dated 15.03.1988, Standing

Order No. 2/88 dated 11.04.1988 and Standing Order No. 1/89 dated 13.06.1989 are required to be looked into. Standing Instruction 1/88 speaks about procedure regarding drawl, storage, testing and disposal of samples from seized narcotic drugs and psychotropic substances. Standing Order No. 2/88 deals with receipt, custody, storage and disposal of seized/confiscated narcotic drugs and psychotropic substances. Standing Order No. 1/89 relates to general procedure for sampling, storage etc. Standing Instruction / Order No. 1/88 inter alia provides as under :-

(i) If the drugs seized are found in packages/containers, the same should be serially numbered for purpose of identification etc.

(ii) Samples must be drawn on the spot of recovery in duplicate, in the presence of search (panch) witnesses and the person from whose possession the drug is recovered.

(iii) The quantity to be drawn in each sample should be 5 gms in respect of all narcotic drugs and psychotropic substances except in the cases of opium, ganja and charas, hashish where a quantity of 24 gms in each case is required. The same quantity should be taken for the duplicate samples

also. The seized drugs in the packages/containers should be well mixed to make it homogeneous and representative before the sample in duplicate is drawn.

(iv) In the case of seizure of a single package/container one sample in duplicate is to be drawn. In case of seizure of more than one packages/container one sample in duplicate from each package/container should be drawn.

(v) All samples must be drawn and sealed in the presence of the accused, panchnama witnesses and seizing officer and all of them shall be required to put their signatures on each sample. The official seal of the seizing officer should also be affixed. If the person from whose possession the drugs have been recovered, wants to put his own seal on the sample, the same may be allowed on both the original and duplicate of each sample.

(vi) The sample in duplicate should be kept in heat sealed plastic bags. The plastic bags should be kept in a paper envelope and properly sealed. Such sealed envelope should be marked as original and duplicate.

(vii) The samples should be dispatched to the respective laboratories under the cover of a Test Memo which shall be prepared in triplicate in proforma NCB-1.

20.Despite the aforesaid Standing Orders/Instructions, the proper procedures are not being followed by the Investigating Agency and cases have come up before

the Court. In the case of **Chandrakant Nagindas Modi V/s. State of Gujarat, 1989 (I) FAC 153,** this Court has taken the view that the muddamal was not properly sealed and there was all possibility of substituting the substance. Coupled with this, the fact that the muddamal remained with the police for more than two months raises a doubt. The prosecution has, therefore, failed to establish the offence beyond reasonable doubt against the appellant. The Court further held that this aspect has escaped the notice of the Learned Trial Judge and in view thereof, the Court allowed the appeal and acquitted the appellants.

21. In **Criminal Appeal No. 323 of 1996, in the case of Jitendra @ Sanjaykumar Suryakant Desai V/s. State of Gujarat** decided on 17.08.2001, the Court has taken the view that the contention regarding laxity in following the procedure relating to sealing of the seized contraband articles has some substance. After considering the evidence of the

Investigating Officer and Panch witnesses, the Court has observed that after drawing the samples, at the time of sealing the samples as well as the remainder of the contraband seized, the slips containing signatures of the Panch witnesses and the Police Officer were placed inside the bags, thereafter the bags were stitched and max seals were applied. There is no dispute that the Seal remains in custody of the police. The possibility of tampering with the muddamal at a later stage and then again resealing the same by the Investigating Agency cannot be ruled out. The very purpose behind carrying out the search, taking of sample and sealing in presence of Panch witnesses is to ensure that there is no scope for any mischief in procedure required to be followed. At the time of sealing, slips containing signatures of Panch witnesses as well as the Investigating Officer are affixed on the articles seized and a seal is applied over it, so that, in case of any attempt for tampering with the article seized, the seal would be broken or the slip would be torn which would immediately reveal such an attempt. If

the slip is put inside as was done in that case, the possibility of tampering cannot be ruled out. Under the circumstances, the Court held that the procedure followed for sealing in that case cannot be said to be proper and free from any possibility of tempering. The procedure, therefore, cannot be said to be beyond the scope of any reasonable doubt and in that event, benefit must go to the accused.

22. This Court has again considered this issue in **Criminal Appeal No. 287 of 1999 in the case of Ganpatram Punmaram Vishnoi V/s. State of Gujarat** decided on 07.05.2002. Additional Public Prosecutor, as an officer of the Court, has pointed out in the case that no proper sealing has been done by the PSO and, therefore, possibility of tampering with the muddamal cannot be ruled out. The Court took the view in that case that the slip signed by the panchas as well as the PSO, which was kept along with the polyethylene bag is required to be affixed at the outer portion below the wax seal of the police

station. If the police keeps the slip signed by the panchas and the PSO along with the sample muddamal and affix the seal of the police station at the outer portion of the bag, possibility of tampering the muddamal cannot be ruled out as the official seal always remains with the concerned police station. The Court, therefore, held that it is obligatory on the part of the police to see to it that the slip signed by the panchas as well as the concerned Officer is affixed at the outer portion of the sample bag below the official seal of the police station. This procedure will totally rule out the possibility of any tampering with the sample muddamal. This has not been done in that case and hence, the Court held that the procedure adopted by the PSO cannot be said to be free from any doubt and the possibility of the tampering also cannot be ruled out. The Court held that in any case, the benefit must go to the accused.

23.All the aforesaid three judgments have been referred to and relied upon by this Court in its later

decision in the case of Navinkumar @ Shambhuprasad @ Bapji Chimanlal Vyas V/s. State of Gujarat, 2006 (1) G.L.H. 409 and held that the slips bearing signatures of the panch-witnesses should be affixed on samples and thereafter seals should be applied so that if any attempt is made to tamper with sample, the slips affixed would get torn.

24.This very Bench has considered this issue regarding sealing procedure in **Criminal Appeal no. 1366 of 1999 with Criminal Appeal no.34 of 2000 decided on 21.9.2006**, wherein all the previous judgments were referred to and relied upon and the appellant / accused was acquitted on the ground that the sealing procedure was not properly followed by the prosecution.

25.If we consider the procedure laid down in the aforesaid Standing Instructions/Order as well as the ratio of above referred four different judgments of

this Court, in light of the facts found from the deposition of the Panch witnesses, Police witnesses and F.S.L. Report as well as from the documents produced on record, we come to the conclusion that in the present case also, proper procedure for sealing has not been followed by the prosecution. P.W. 1 - N.C. Pandya, P.S.I., Exh. 12 is one of the members of the raiding party. He has filed the complaint against the accused. He has deposed in his deposition that the contraband article was kept in the bag and the slip duly signed by panchas was kept in the said bag and the said bag was wrapped by the white paper and it was tied down by the thread and thereafter, the seal of the P.I., B Division was affixed thereon. Panchnama Exh. 16 states that the contraband article brownsugar was kept in the plastic bag and that plastic bag was kept in white paper bag and slip duly signed by panchas was kept therein and it was wrapped by the papers and tied down by thread. Thereafter, PSI, Rajkot City seal was affixed on that packet. FSL Report Exh. 37 indicates that a paper seal found inside the parcel

bearing the signature of panchas.

26. The above oral as well as documentary evidence clearly establish that the slip duly signed by panchas was loosely kept inside the bag and it was not put under the seal. Thus, there was major defect in the sealing procedure and hence, possibility of tampering of sample cannot be ruled out. Because of the material contradictions between the deposition of the prosecution witnesses regarding sealing procedure and FSL report, this Court is of the view that there is possibility of tampering with the contents of the samples before they were sent to FSL for analysis. When there is possibility of tampering with the contents of the samples, no reliance can be placed on the expert opinion of the report of the FSL and it cannot be said that the contraband articles were seized from the possession of the accused and the sample there from was taken and that the sample was sent for chemical analysis and that the report of the analysis as expert is regarding the same. When it is so, then the report deserves to be discarded in

toto. Standing Instructions issued by the Central Government are violated as it has not come in evidence from the deposition of all the prosecution witnesses that the accused have also signed the slip which was found in the bag containing the samples. In light of these factual background, it is very unsafe to sustain the conviction order. The appellant - original accused is in jail for more than 6 years. It is very unfortunate that the appeal could not be heard earlier.

27. In peculiar facts of the present case and in light of the decisions referred to herein above and the principles laid down therein, this Court is of the view that the conviction order passed against the appellant - original accused cannot be sustained. The Appeal, therefore, succeeds. The judgment and order dated 10.07.2001 passed by the learned Sessions Judge, Rajkot in Sessions case No. 55 of 2000, convicting the appellant - original accused for the offence punishable under Section 21 of the Act and sentencing him to rigorous imprisonment of 10

years and fine of Rs. 1 Lacs and in default thereof, to undergo rigorous imprisonment for two years for commission of such offence is hereby quashed and set aside. The appellant - original accused - Jeso @ Jesing Ladhubhai Dhamecha (Koli) is hereby acquitted from the charge levelled against him. The respondent - State of Gujarat and the jail authority is hereby directed to release the appellant - original accused from jail forthwith unless his presence is required in connection with any other case. Amount of fine, if paid shall be refunded to him.

28.This Appeal is accordingly allowed.

[A. M. KAPADIA, J.]

[K. A. PUJ, J.]

Savariya